

MAY 20 12 55 PM '99

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
International Exchange)	
Communications, Inc. Request for Waiver)	
)	

ORDER

Adopted: May 13, 1999

Released: May 13, 1999

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules² applicable to carriers changing a consumer's preferred carrier. In this order we grant International Exchange Communications, Inc. (IEComm) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders* to enable IEComm to change the preferred carrier of those consumers currently presubscribed to Robo Tel, Inc. (Robo Tel) from Robo Tel to IEComm.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*).

² 47 C.F.R. §§ 64.1100 - 64.1190.

execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."³ The goal of section 258 is to eliminate the practice of "slamming," which is the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁴ In the recently issued *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁵

3. IECComm requests a waiver of our verification rules to allow it to be designated the preferred long distance carrier for customers of Robo Tel without first obtaining the customers' authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant IECComm's petition subject to the conditions represented in its filing.

II. DISCUSSION

4. Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁶ We find that IECComm has made a showing of good cause to grant a waiver of the requirements in the Commission's carrier change rules and orders for those consumers who have authorized Robo Tel as their preferred carrier. IECComm has demonstrated that special circumstances exist that would warrant a waiver. In its Petition for Waiver of Commission Rules (Waiver Petition),⁷ IECComm states that it intends to purchase certain assets of Robo Tel including Robo Tel's customer accounts, accounts receivables, and letters of agency (LOAs) or other customer authorizations for service. IECComm states that it has notified Robo Tel customers of the proposed assumption of their service by IECComm and

³ 47 U.S.C. § 258.

⁴ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁵ Pursuant to these new procedures, carriers must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁷ On May 4, 1999, IECComm filed a First Amended Petition for Waiver of Commission Rules (Amended Waiver Petition).

that it will repeat the same notification after consummation of the sale.⁸ IEComm's notification advised customers that they would receive the same or better rates and services than those they were receiving from Robo Tel and advised consumers that they have the right to change their preferred carrier. IEComm states that under these special circumstances, a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition of those customers' long distance service to IEComm's service, at the same or better rates than those customers were receiving from Robo Tel.

5. We also conclude that IEComm has shown that granting its request is in the public interest. Without this waiver, Robo Tel's customers are at risk of either losing their long distance service or of being charged substantially higher rates than those they received from Robo Tel. Furthermore, IEComm has agreed that if the Commission waives its rules to permit IEComm to provide service to Robo Tel's customers, IEComm will investigate, respond, and attempt to cure any complaints registered against Robo Tel processed after the sale.⁹ In addition, IEComm has implemented a plan for notifying Robo Tel's customers of the assumption of their service by IEComm and that they will continue to be billed at the same or better rates than Robo Tel's rates. IEComm's notice also advises consumers that they have the right to change their preferred carrier at any time.¹⁰ We conclude that these conditions will adequately protect the rights of Robo Tel's customers.

III. CONCLUSION AND ORDERING CLAUSES

6. For the foregoing reasons, we grant IEComm's waiver request for the limited purposes described above. We find that allowing IEComm to change Robo Tel's customer's preferred carrier from Robo Tel to IEComm without first obtaining each customer's express authorization and verifying such authorization in accordance with the Commission's carrier change rules and orders serves the public interest under these special circumstances where Robo Tel will cease to function as a common carrier. The grant of this waiver is conditioned upon IEComm's provision of the customer notification and complaint resolution services described above and further detailed in its petition.

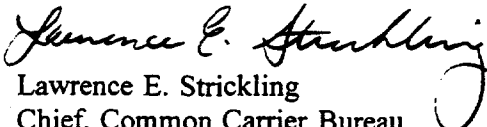
7. Accordingly, pursuant to authority contained in Sections 1, 4, and 258, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the waiver request filed by International Exchange Communications, Inc. on April 9, 1999, and amended on May 4, 1999, IS GRANTED to the extent indicated herein.

⁸ Amended Waiver Petition at 2.

⁹ *Id.*

¹⁰ *Id.* IEComm also states that it will be attempting to obtain the authorization to transition Robo Tel's customers to IEComm but that this waiver is necessary because some customers may not complete that authorization prior to the culmination of the sale. Letter from Randall A. Smith, Counsel for IEComm to Colleen K. Heitkamp, Federal Communications Commission (dated April 28, 1999).

8. IT IS FURTHER ORDERED that this Order is effective upon completion of the sale of Robo Tel's assets to IEComm.


Lawrence E. Strickling
Chief, Common Carrier Bureau